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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CINDY LAPID,

Plaintiff and Appellant,

v.

SANDRA J. KEENER et al.,

Defendants and Respondents.

D074203

(Super. Ct. No. 37-2018-00021753-
CU-HR-CTL)

APPEAL from an order of the Superior Court of San Diego County, Richard S. Whitney, Judge. Affirmed.

Cindy Lapid, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Cindy Lapid appeals from the denial of a request for a civil harassment restraining order (Code of Civ. Proc., § 527.6.)¹ against Sandra J. Keener, Guadalupe Medrano and Mary Davenport. As we will explain, Lapid has not filed an adequate record on appeal, and we accordingly affirm the order denying a restraining order.

¹ Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Lapid is a resident in a senior apartment building in downtown San Diego. In an opinion filed simultaneously in Case No. D074216, we address Lapid's appeal from the denial of a request for a civil harassment restraining order against Keener and Medrano that Lapid filed on February 6, 2018. As we explain in that opinion, Keener is a resident of the apartment building, and Medrano is the apartment building's former manager. The dispute in that case involved a confrontation between Keener and Lapid concerning whether the door to the building's inner courtyard should be kept open or closed. In this case, on May 2, 2018, Lapid filed another request for a civil harassment restraining order against Keener and Medrano, adding Davenport as an additional defendant. Although the appellate record is not clear, Davenport apparently also resides in the apartment building.

The incident giving rise to the instant application for a restraining order occurred on May 1, 2018 in the lobby of the apartment building. The dispute apparently involved Lapid attempting to take photographs of Keener, which escalated into a physical altercation and a call to the police.

On May 23, 2018, at a hearing at which all parties appeared, the trial court denied Lapid's request for a restraining order and dismissed the action with prejudice.

Lapid filed a notice of appeal on May 23, 2018. No court reporter was present at the hearing, but Lapid prepared a proposed settled statement and submitted it to the trial court. The proposed settled statement included several pages setting forth Lapid's view of the case and explaining that Lapid was permitted to make an opening statement at the

hearing during which she described the May 1, 2018 incident. The proposed settled statement also attached certain exhibits, among which is a USB flash drive containing security camera video from the apartment building showing the incident. Lapid stated that the trial court did not view the video. On September 14, 2018, the trial court certified that Lapid's settled statement "is accurate as to [Lapid's] representation," and noted that Keener, Medrano and Davenport had not responded regarding the proposed settled statement.

According to Lapid's notice designating the record on appeal, she elected to proceed by means of an appellant's appendix pursuant to California Rules of Court, rule 8.124. On September 26, 2018, the clerk of the court sent a letter to Lapid notifying her that the appellant's appendix and opening brief were due within 40 days. However, Lapid did not file an appellant's appendix.

II.

DISCUSSION

Lapid sought a civil harassment restraining order pursuant to Code of Civil Procedure section 527.6, which provides that "[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." (§ 527.6, subd. (a)(1).) Section 527.6, subdivision (b)(3) defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to

suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b)(3).) Section 527.6, subdivision (i), requires "clear and convincing evidence that unlawful harassment exists." (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1227.) An injunction restraining future conduct is only authorized when it appears harassment is likely to recur in the future. (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402.) "We review the trial court's decision to grant the restraining order for substantial evidence." (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.)

Although Lapid followed the proper procedure for obtaining a settled statement to support her appeal in the absence of a reporter's transcript, she neglected another crucial step in developing the record on appeal in that she did not file an appellant's appendix. An appellant's appendix, if filed, would have included documents that the court requires to evaluate Lapid's appeal. Because Lapid did not file an appellant's appendix the appellate record does not contain necessary documents such as (1) Lapid's request for a civil harassment restraining order so that we can determine the relief she sought; and (2) the responses filed by Keener, Medrano and Davenport setting forth their arguments and evidence in response, so that we can determine whether those responses contain support for the trial court's decision.

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. . . . "This is not only a general principle of

appellate practice but an ingredient of the constitutional doctrine of reversible error.' . . . 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' . . . ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' . . . 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' " (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609, citations omitted.)

Here, because the appellate record does not contain necessary documents, including Lapid's request for a civil harassment restraining order and the responses by Keener, Medrano and Davenport, we are unable to determine whether there is merit to Lapid's contention on appeal that substantial evidence does not support the trial court's ruling that Lapid failed to prove she was entitled to a restraining order against Keener, Medrano and Davenport. Accordingly, we conclude that Lapid has not met her burden on appeal to establish that the trial court's order should be reversed.

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.